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Supreme Court of the United States.

OCTOBER TERM, 1953.

No. 191.

JAMES FRANCIS, *Petitioner,*

v.

FREDERIC A. CRAFTS, *Respondent.*

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

This is a petition seeking to review a decision of the United States Court of Appeals for the First Circuit (R. 35) affirming a decision of the Massachusetts District Court (R. 22) to the effect, in substance, that the respondent is immune from civil liability under the provisions of the Civil Rights Act, 8 U.S.C. 43, for action taken in the course of performing his official duties as judge of a Massachusetts Court of general jurisdiction.

Facts.

The facts appear in the affidavit of the respondent and the documents attached thereto (R. 11 to 20, incl.) and are not refuted.

While the respondent was sitting as Special and Acting Justice of a Massachusetts Court on March 19, 1940, the Superintendent of one State institution requested the transfer of the petitioner to another State institution because of a behavior problem under the provisions of Massachusetts Acts of 1911, chapter 595, section 4 (now included in Massachusetts General Laws, chapter 123, section 116) (R. 11, 12, 14). The petitioner was examined by two physicians, who reported to the respondent that he was not suffering from mental disease and did not recommend commitment to a reformatory, jail or prison, but found that he was "a defective delinquent and will need institutional care on the basis of delinquency" (R. 17). The petitioner was then a minor and his mother was present at the institution on March 19, 1940, and was notified of the request for his removal and assented to it (R. 12). The petitioner was an inmate there as the result of a voluntary admission (R. 12).

The respondent entered an order under a Massachusetts statute on March 19, 1940, for the removal of the petitioner from one institution to another in order that he might receive a more suitable type of care (R. 13, 18).

Statute Involved.

The statute in effect on March 19, 1940, under which the request and order for removal were made, is Massachusetts Acts of 1911, chapter 595, section 4, reading as follows:

> "If an inmate of a school for the feeble minded persistently violates the regulations of the school, or conducts himself so indecently or immorally, or so grossly misbehaves as to render himself an unfit subject for retention therein, the officer in charge shall make a report thereof to one of the judges mentioned in section fifty. The judge shall make inquiry into the facts

and, if satisfied that such inmate is not a fit subject for retention in the school, shall order his removal to a department for defective delinquents, according to his age and sex as hereinafter provided."

Point I.

THE DECISION OF THE UNITED STATES COURT OF APPEALS IN THIS CASE IS IN ACCORD WITH THE DECISION OF THIS COURT AND OF OTHER COURTS.

The specific contention of the petitioner that judges are not immune from suit under the Civil Rights Act was decided adversely to his contention by this Court in *Tenney* v. *Brandhove,* 341 U.S. 367. In that case a petition for a rehearing was denied in 342 U.S. 843, and there would seem to be no sufficient reason for another hearing by this Court of the same issue.

See also

Alzua v. *Johnson,* 231 U.S. 106.
Bradley v. *Fisher,* 13 Wall. 335, 347.

The statute invoked by the plaintiff in 8 U.S.C. 43 was originally enacted in 1871 and many other cases decided since that date have consistently sustained the rule as to the exemption of a judge from civil liability on account of his judicial acts.

Spruill v. *O'Toole,* 74 F. (2d) 559, at 560 (C.A. D.C. 1934).
Fletcher v. *Wheat,* 100 F. (2d) 432 (C.A. D.C. 1938).
Booth v. *Fletcher,* 101 F. (2d) 676, at 680 (C.A. D.C. 1938).
Brictson v. *Woodrough,* 164 F. (2d) 107, at 109 (C.C.A. 8th Cir. 1947).

Connor v. *Real Title Corporation,* 165 F. (2d) 291, at 294 (C.C.A. 4th Cir. 1947).

Bottone v. *Lindsley,* 170 F. (2d) 705 (C.A. 10th Cir. 1948).

Fletcher v. *Bryan,* 175 F. (2d) 716, at 718 (C.A. 4th Cir. 1949).

Gregoire v. *Biddle,* 177 F. (2d) 579, at 580 (C.A. 2d Cir. 1949).

Papagianakis v. *The S.S. Samos,* 186 F. (2d) 257, at 260 (C.A. 4th Cir. 1950).

Allard v. *Estes,* 292 Mass. 187, 189.

Cobb v. *Malden,* 202 F. (2d) 701 (C.A. 1st Cir. 1953).

Point II.

THE DECISION OF THE THIRD CIRCUIT RELIED UPON BY THE PETITIONER IS NOT CONTROLLING ON THE ISSUE RAISED.

The petitioner relies upon the case of *Picking* v. *Pennsylvania Railroad Co.,* 151 F. (2d) 240 (C.C.A. 3d Cir. 1945). That case was decided before the decision of this Court in *Tenney* v. *Brandhove,* 341 U.S. 367, and is also distinguishable on its facts.

Alzua v. *Johnson,* 231 U.S. 106, 111.
Record, p. 40, and pp. 26-29, incl.

Point III.

UPON THE UNDISPUTED FACTS THE PETITIONER WAS NOT DEPRIVED OF ANY RIGHTS BY THE RESPONDENT.

As a voluntary inmate of a school for feeble-minded the then minor petitioner was transferred to another State institution with his mother's consent (R. 12) and the order of

the respondent was merely for his removal to insure suitable care (R. 13, 18).

The petitioner was not charged with, convicted of or sentenced for any criminal offense in connection with which he was entitled to notice or a trial and presumably could have been released from either State institution at any time with the approval of his parent.

There is no basis of fact in the record for any application of the rule contended for by the petitioner and the facts are fully set forth in the opinion of the Court of Appeals as a basis for its decision (R. 36, 37).

Conclusion.

The opinion of the Court of Appeals is sound and able and should be sustained.

It is accordingly submitted that the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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